HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 17 (S/B) of 2003

Rajendra Singh & another vs. State and others

Approved for reporting.

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~~Not approved for reporting~~

Date of decision. 15.10.2003

Initial of Judge

COURT NO. 6

HIGH COURT OF UTTARANCHAL AT NAINITAL.

WRIT PETITION NO. 17 (S/B) OF 2003

CIVIL SIDE

1. Rajendra Singh C.P. 326 s/o Sri Rahtulala
   R/o Chaksanagar Defence Colony,
   Dehradun
2. Sanjeev Kumar C.P. 768
   S/o Sri Om Prakash, House No. 46
   Patel Nagar, Dehradun ……..…… PETITIONERS

Versus

1. State of Uttaranchal
2. Inspector General of Police, Garhwal Range
   Pauri Garhwal.
3. Senior Superintendent of Police
   Dehradun. ……. RESPONDENTS

Sri Vinod Sharma, Advocate for the petitioner
Standing Counsel for the respondents.

Hon'ble Rajesh Tandon, J.

The present writ petition has been filed challenging the order dated 18.12.2003 transferring the petition no.1 to Tehri Garhwal and Petitioner no.2 to Pauri Garhwal.

Heard the learned counsel for the petitioners and the learned Standing Counsel for the respondents.

The grievance of the petitioners are that the children of the petitioners are studying at Dehradun and they cannot be transferred in the mid session. They are ill and they filed medical certificates. They have been advised for complete bed rest for one month.

The petitioners have also stated that they have given option for their transfer to State of U.P. which is still under consideration and as such their transfer from their present posting is bad in law.

So far as the transfer is concerned no interference can be made under Article 226 of the Constitution of India.

It has been held by the Apex Court in the case *Shilpi Bose and others vs. State of Bihar and others AIR 1991 SC 532* as under:

"In our opinion, the courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from the one place to the other. Transfer order issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the

Department. If the courts continue to interfere with day to day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration, which would not be conducive to public interest. The High Court over looked these aspects in interfering with the transfer orders."

It is well settled that the transfer is an exigency of service. However option for the petitioner to approach the higher authorities is available and the petitioners are at liberty to approach the higher authority. I find no infirmity in the order of transfer of the petitioner.

So far as the contention of the petitioners with regard to their option for Uttar Pradesh is concerned, no order can be passed at this stage as the matter is still under consideration and no order has been passed by the authority concerned in this regard.

The matter of option has already been decided by the Division Bench of this Court in Writ Petition No. 451 (S/B)/2003 with the following observations:

"Under Section 73 of the U.P. Reorganization Act, 2000 final allocation of all State Services personnel between the successor States shall be decided by the Central Government. Till date, that decision has not been taken. Therefore, the petition is premature."

Similar matter was also decided by the Bench consisting of Hon'ble P.C. Verma J. His Lordship has passed the following order:

"Heard learned counsel for the parties. The controversy is squarely covered by the order passed by Division Bench of this Court in W.P. No. 1426 (S/B) of 2001. Mulayam Singh vs. state of Uttaranchal and others, on 3.6.2003. The petitioner are also relegated to approach the Advisory Board with fresh representation and same be disposed of as observed in the aforesaid writ petition. With the aforesaid observations, the writ petition is disposed of."

The petitioners, therefore, are at liberty to approach the Advisory Board with fresh representation if they are so advised. If such a representation is made, the Union of India shall proceed to decide the same in accordance with law considering the option given by the petitioners for the State of U.P.

The petitioners are at liberty to approach the authorities as stated above who shall pass the order at an early date.

In view of the observations made above, the writ petition, lacks merit and is dismissed. No order as to costs.

15.10.2003 **(Rajesh Tandon, J.)**
Dhyani